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23 **UNITED STATES DISTRICT COURT**  
24 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
25 **OAKLAND DIVISION**

26 NATURAL RESOURCES DEFENSE  
27 COUNCIL, INC.,

28 Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE  
INTERIOR; UNITED STATES FISH AND  
WILDLIFE SERVICE,

Defendants, and

Case No. 4:21-cv-00561-JSW

Related Case No. 4:21-cv-00344-JSW

No. 4:21-cv-00349-JSW

**FIRST AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

(Endangered Species Act,  
Administrative Procedure Act)

1 NATIONAL RIFLE ASSOCIATION OF  
2 AMERICA; SAFARI CLUB INTERNATIONAL,  
3  
4 Defendant-Intervenors.

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1 INTRODUCTION

2 1. Plaintiff Natural Resources Defense Council (NRDC or “Plaintiff”)  
3 challenges the United States Fish and Wildlife Service’s (the “Service”) decision to remove  
4 the gray wolf (*Canis lupus*) from the list of threatened and endangered species.  
5 Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (*Canis lupus*)  
6 From the List of Endangered and Threatened Wildlife, 85 Fed. Reg. 69,778 (Nov. 3, 2020)  
7 (the “Delisting Rule” or the “Rule”).

8 2. Gray wolves are an iconic species nearly extirpated in the United States  
9 through widespread predator control programs, and habitat and prey loss. Since the 1970s,  
10 slowly and with the protection of the Endangered Species Act (ESA), wolves have begun  
11 to recover. After repeated failed attempts to reduce or eliminate protections for wolves  
12 over the last twenty years, the Service’s new Delisting Rule unlawfully removes  
13 protections for gray wolves across the United States based on their purported recovery in  
14 one area – the Great Lakes. This nationwide delisting would stop wolf recovery in its  
15 tracks, particularly in areas where wolves have only begun to regain their historical  
16 footing.

17 3. According to the Service, there were about 4,200 wolves in the Great Lake  
18 states of Minnesota, Michigan, and Wisconsin when it issued the Delisting Rule. However,  
19 these states have only committed to maintaining half of that number (about 2,150). Wolf  
20 hunts in Wisconsin triggered by the Delisting Rule’s issuance will result in the death of  
21 hundreds of wolves this year alone.

22 4. Gray wolves are present, but not yet recovered, in several other geographic  
23 areas, including the Pacific Coast, the Central Rockies, and other portions of the Midwest  
24 and the Northeast.

25 5. There are only 54 wolves and seven established, breeding wolf pairs in the  
26 Pacific Coast region of California and the western portions of Washington and Oregon  
27 where wolves had been protected as endangered (“Pacific Coast wolves”).  
28





1 nationwide, including more than 75,000 members in California; 13,000 members in  
2 Oregon; 18,000 in Washington; 2,500 members in Utah; 13,000 members in Colorado; 8,000  
3 members in Wisconsin; 11,000 members in Michigan; and 9,000 members in Minnesota.  
4 NRDC has long been active in efforts to protect endangered and threatened species  
5 generally and gray wolves specifically.

6 18. NRDC members regularly observe, visit, study, work to protect, and delight  
7 in the presence of gray wolves in the wild. NRDC members also regularly observe, visit,  
8 study, work to protect, and delight in areas that are wolf habitat or potential wolf habitat.  
9 NRDC members intend to continue doing so in the future. NRDC members derive  
10 scientific, educational, recreational, conservation, aesthetic, and other benefits from the  
11 existence of gray wolves in the wild. These interests have been, are, and will be directly,  
12 adversely, and irreparably affected by Defendants' violation of the law.

13 19. The loss of federal protections for gray wolves under the ESA impedes  
14 recovery of the species. Following the Delisting Rule, NRDC members will have reduced  
15 opportunities to observe, enjoy, or delight in the presence of gray wolves in the wild due  
16 to increased wolf mortality or changes in wolf behavior caused by threats including  
17 increased human-caused mortality, increased lethal control, lost connectivity, threats to  
18 genetic diversity, loss of breeding wolves, impacts on wolf social structure, or other factors  
19 that threaten small populations of gray wolves. These are actual, concrete injuries,  
20 traceable to Defendants' conduct that would be redressed if the Court grants NRDC the  
21 requested relief and vacates the Delisting Rule. NRDC and its members have no adequate  
22 remedy at law. NRDC members will continue to be prejudiced by Defendants' unlawful  
23 actions until and unless this Court provides the relief prayed for in this Complaint.

24 20. NRDC member Ellyn Wiens lives within wolf range in Duluth, Minnesota.  
25 She has been keenly interested in gray wolves ever since her grandparents introduced her  
26 to the outdoors and wildlife, and she has now passed that same sense of appreciation on to  
27 her own grandchildren. Wolves are her favorite wild animal, and it is important for her  
28 that they have room to roam and to thrive. Ms. Wiens has always wanted to see a wolf in

1 the wild and hopes to see one from her own wooded home. She feels great excitement and  
2 joy about the possibility of seeing a gray wolf on or around her property in the future. Her  
3 neighbors in Minnesota have captured images of wolves on trail cameras, which gives her  
4 great hope that she will soon experience one on her property. She has seen evidence of  
5 wolves and learned more about them on visits to Isle Royale and Denali National Parks.  
6 She stays informed on the status of wolves locally through a wildlife biologist friend and  
7 has also enjoyed seeing wolves at zoos. Ms. Wiens has concerns about the impacts of  
8 delisting, including state management of wolves, genetic inbreeding of small wolf  
9 populations, and negative effects on wolf social dynamics, on her ability to see wolves on  
10 or around her property.

11         21. NRDC member Matt Wilkin is a retired federal employee who worked for  
12 the U.S. Forest Service and Bureau of Land Management who has been interested in  
13 wolves for decades. Mr. Wilkin lives in Minnesota and has a family farm in Michigan's  
14 Upper Peninsula. At his home in Minnesota, Mr. Wilkin has seen wolves and their tracks.  
15 This past fall, he even heard and recorded multiple wolves howling to each other. Mr.  
16 Wilkin enjoys seeing wolves and is always looking for them and other wildlife. He notes  
17 that you don't soon forget when you've seen a wolf. Mr. Wilkin believes that science-based  
18 principles should be applied to ensure wolves are protected but worries that after federal  
19 delisting state-level wolf management policies will be relaxed because of influence by  
20 hunters. He worries that some people will even exceed limits on their hunting permits. He  
21 is concerned that this will drive wolves into remoter areas and will stop him from being  
22 able to continue to observe wolves from his home.

23         22. NRDC member Diarmuid McGuire owns and operates the Green Springs  
24 Inn in southern Oregon. Mr. McGuire feels deep satisfaction and gratification knowing  
25 that wolves visit his property and frequent his neighbors' properties. Mr. McGuire feels an  
26 emotional connection to wolves and values the role they play as a keystone species. His  
27 business depends on visitors that come to the area because of its vibrant ecosystems. One  
28 major draw is the Cascade-Siskiyou National Monument, which was designated for the

1 protection of biodiversity. Mr. McGuire's property is an inholding of the National  
2 Monument. Mr. McGuire cares about wolves as a tangible symbol that he can use to  
3 explain the abstract concept of biodiversity. He also loves wolves because of their active  
4 role as predators that manage the elk population to keep the ecosystem healthy. When a  
5 radio-collared wolf known as OR-7 was first tracked in the area about a decade ago, he  
6 threw a welcome home party complete with "Welcome to the Green Springs" buttons  
7 featuring a gray wolf. He did this to welcome gray wolves to the neighborhood, and to  
8 show the community's support for their presence there. Since then, he has seen and  
9 enjoyed, and continues to enjoy, the positive impacts that wolves have had on the local  
10 ecosystems. He hopes to see or hear gray wolves on his property in the future. He also  
11 kept informed of OR-7's movement into California and follows the multiple packs related  
12 to OR-7 on both sides of the state line. Mr. McGuire worries that wolves could lose state  
13 protections in the wake of federal delisting. He is concerned that the small number of  
14 wolves in the area will be vulnerable after delisting and that they would be unable to  
15 withstand hunting. He is worried that the loss of those wolves will reverse the positive  
16 ecological benefits he has observed since their return to the landscape.

17 23. NRDC member Gonzalo Rodriguez lives in San Francisco and is employed  
18 by NRDC. Mr. Rodriguez has always been a nature and wildlife enthusiast. He first  
19 became interested in gray wolves as a symbol of America after moving to this country  
20 while growing up. His awareness of the species and the threats facing them increased  
21 when he moved to the West Coast. Last year, Mr. Rodriguez saw wolves in the wild on a  
22 trip to Yellowstone National Park. He went to the park with his fiancée with the hopes of  
23 seeing wolves from a distance, but they had the good luck to spot the pitch-black alpha  
24 male wolf from the Wapiti Lake Pack from only a few hundred yards away. More  
25 members of the pack emerged as they watched, and Mr. Rodriguez was able to record  
26 video of more than a dozen of the wolves howling. He also derived great pleasure in  
27 watching them feed on a carcass and move through the snow into the forest line. Mr.  
28 Rodriguez found the experience of watching wolves in the wild to be incredible and



1 unique. He also cherishes the fact that he was able to observe up close a pack that is  
2 known to be reclusive. On that same trip, Mr. Rodriguez observed other packs, and he  
3 plans to return to Yellowstone again with family in December 2021 to share the experience  
4 of seeing wolves with them. Mr. Rodriguez also keeps informed about wolves in  
5 California, and has been, and continues to be, particularly interested in learning about lone  
6 wolves returning to the state. He feels great joy in learning about California's wolves and  
7 plans this spring or summer, when conditions permit, to travel to the Lassen Pack's  
8 territory in Northern California in order to see them and the effects they have on that  
9 ecosystem. Mr. Rodriguez cares about and has experienced, and plans to continue to  
10 recreate in, the coastal regions of California. Because of his passion for observing wolves in  
11 the wild, Mr. Rodriguez hopes to see wolves return to those areas and looks forward to  
12 traveling there for the purpose of experiencing wolves in his home state, if they return to  
13 that area. In addition to recreational interests, Mr. Rodriguez feels a spiritual value in just  
14 knowing that wolves are returning to their historical ecosystems and derives joy from that  
15 even beyond seeing them. He is thankful that the ESA has helped wolves make a  
16 comeback in some parts of the country. However, he is concerned that their numbers are  
17 not what they need to be and that they remain absent from important areas of their range.  
18 He worries that after delisting more people will shoot wolves, including ranchers trying to  
19 protect livestock, people with an unfounded fear of wolves, or people that merely want to  
20 shoot wolves for sport. Because of the small number of wolves, Mr. Rodriguez worries that  
21 he would then lose the chance to see wolves again or to be able to share that experience  
22 with family in the future.

23 24. NRDC member Margaret Gompper lives on a lake in Langlade County in  
24 northeastern Wisconsin. Ms. Gompper is an avid wildlife photographer. One of Ms.  
25 Gompper's longstanding goals is to photograph a gray wolf on or near her property. She  
26 first became interested in gray wolves decades ago when she lived near a wolf preserve.  
27 She enjoyed hearing the wolves howling in the distance and the opportunities she had to  
28 see the wolves on the preserve. To Ms. Gompper, every chance to see a wolf in the wild is

1 exciting and precious. She volunteers for local groups advocating for public awareness  
2 and continued protection of gray wolves. Gray wolves also live near Ms. Gompper's  
3 current home. She has identified wolf kills on her property and delights in seeing the  
4 range of wildlife that benefit from the deer that wolves kill. She has captured images of  
5 wolves on trail cameras and has seen wolves several times at a distance from her  
6 property's elevated perspective. But she has not yet been close enough to photograph  
7 wolves. Ms. Gompper is concerned that the delisting of gray wolves – and in particular  
8 Wisconsin's wolf hunts that are triggered by delisting – will undermine the wolves'  
9 recovery and result in fewer wolves in her area than there would have been if federal  
10 protections were still in place. She worries that, because of the delisting, she will lose  
11 unique opportunities to hear, see, and photograph wolves near her home in the future.

12 25. NRDC member Brenda Nelson lives in Iron County in northern Wisconsin.  
13 Ms. Nelson first became interested in wolves on a family vacation to Yellowstone National  
14 Park. On that trip, her family met a wolf biologist who was following a pack. Ms. Nelson  
15 was brought to tears when she saw the whole pack howling. Ms. Nelson's property abuts  
16 state and county land, where she regularly hikes, kayaks, and snowshoes. The Cedar Lake  
17 Pack is a wolfpack that lives near her home. When Ms. Nelson goes out to recreate, she  
18 always looks for signs of wolves. While snowshoeing on state forest land near her home,  
19 Ms. Nelson once saw two wolves on an uninhabited, frozen lake. The wolves looked at her  
20 from across the lake, and it was one of her most memorable experiences. On two  
21 occasions, Ms. Nelson has gotten wolves to respond to calls that she made; and she  
22 recently saw a wolf kill near her property and could hear the wolves near the kill. In  
23 January 2021, Ms. Nelson took a course with the Wisconsin Department of Natural  
24 Resources (DNR) on wolf ecology and tracking. Ms. Nelson plans to participate in  
25 upcoming opportunities to track wolves and report the data to the Wisconsin DNR. She is  
26 very concerned about hunting's impact on wolf populations. Ms. Nelson is concerned that  
27 because of the loss of ESA protections for gray wolves, and the state-sanctioned hunts that  
28 will follow, it will be more difficult for her to see, hear, and track wolves in the wild in the

1 future. Restoring ESA protections for gray wolves, on the other hand, would protect the  
2 wolves in her area that she enjoys seeing, hearing, and tracking.

3 26. NRDC member Martha Osterberg lives in Bayfield, Wisconsin, in a forested  
4 area near Lake Superior. Ms. Osterberg first became interested in gray wolves as a  
5 teenager growing up in Minnesota, but has had very few opportunities to observe them in  
6 the wild. She once was lucky enough to observe a wolf cross a highway in Minnesota, and  
7 she later saw two wolves near Bark Bay in northern Wisconsin crossing a patch of ice in  
8 the winter. Seeing the wolves cavorting on the ice, even from far away, was a magical  
9 experience that she will never forget. Since moving to Wisconsin, Ms. Osterberg has not  
10 observed any wolves in person, but is trying to change that. She recently took a class on  
11 tracking wolves and learned how to identify signs of wolves in the wild. Ms. Osterberg  
12 plans to participate in the DNR's wolf monitoring program in the future and hopes to see  
13 a wolf in person during her monitoring. Ms. Osterberg worries that the loss of federal ESA  
14 protections will harm wolf populations and her ability to see wolves (and their signs) near  
15 where she lives, since the loss of those protections requires Wisconsin to resume wolf  
16 hunts. She believes that restoring federal protections for gray wolves would allow their  
17 populations to continue to recover and grow in the wild, which would improve her  
18 chances of seeing wolves in the wild in the future.

19 27. Defendant Department of the Interior ("Interior") is an agency of the United  
20 States Government and includes Defendant the Service. Among other functions, Interior is  
21 responsible for the administration and implementation of the ESA for terrestrial animal  
22 species and is legally responsible for listing decisions for species such as the gray wolf.

23 28. Defendant Fish and Wildlife Service is an agency of the United States  
24 Government, within and under the jurisdiction of the Department of the Interior. Through  
25 delegation of authority by the Secretary of the Interior ("Secretary"), the Service  
26 administers and implements the ESA as it relates to terrestrial animal species and is legally  
27 responsible for listing decisions for species such as the gray wolf.

28

1 **BACKGROUND**

2 **I. THE ENDANGERED SPECIES ACT PROTECTS PLANTS AND ANIMALS AT**  
3 **RISK OF EXTINCTION**

4 29. The ESA is “the most comprehensive legislation for the preservation of  
5 endangered species ever enacted by any nation.” *TVA v. Hill*, 437 U.S. 153, 180 (1978). As  
6 the Supreme Court has recognized, “[t]he plain intent of Congress in enacting [the ESA]  
7 was to halt and reverse the trend toward species extinction, whatever the cost. This is  
8 reflected not only in the stated policies of the Act, but in literally every section of the  
9 statute.” *Babbitt v. Sweet Home Chapter of Cmty. for a Greater Or.*, 515 U.S. 687, 699 (1995)  
10 (quoting *Hill*, 437 U.S. at 184).

11 30. The law’s “purposes . . . are to provide a means whereby the ecosystems  
12 upon which endangered species and threatened species depend may be conserved, [and]  
13 to provide a program for the conservation of such endangered species and threatened  
14 species.” 16 U.S.C. § 1531(b). The ESA defines “conservation” as “the use of all methods  
15 and procedures which are necessary to bring any endangered species or threatened  
16 species to the point at which the measures provided pursuant to this chapter are no longer  
17 necessary.” *Id.* § 1532(3).

18 31. To implement these purposes, the ESA directs that the “Secretary shall . . .  
19 determine whether any species is an endangered or threatened species.” 16 U.S.C.  
20 § 1533(a)(1). This determination must be made on the basis of five factors:

- 21 (A) the present or threatened destruction, modification, or curtailment of its habitat  
22 or range;
- 23 (B) overutilization for commercial, recreational, scientific, or educational purposes;
- 24 (C) disease or predation;
- 25 (D) the inadequacy of existing regulatory mechanisms; or
- (E) other natural or manmade factors affecting its continued existence.

26 *Id.* The ESA “requires the [Service] to consider *each* of the [five] factors ‘to determine  
27 whether any species is an endangered species or threatened species.’” *Crow Indian Tribe v.*  
28

1 *United States*, 965 F.3d 662, 671 (9th Cir. 2020) (quoting 16 U.S.C. § 1533(a)(1)) (emphasis  
2 added).

3 32. The Service must use the best available science to support this determination.  
4 16 U.S.C. § 1533(b)(1)(A). The best available science requirement applies both to listing and  
5 to delisting decisions.

6 33. The listing determination can only be done for “species.” The ESA defines  
7 “species” to include “any subspecies of fish or wildlife or plants, and any distinct  
8 population segment of any species of vertebrate fish or wildlife which interbreeds when  
9 mature.” 16 U.S.C. § 1532(16).

10 34. Designation of a distinct population segment allows portions of a species  
11 that are sufficiently significant and discrete to be considered independently for purposes  
12 of their listing status. *See* 61 Fed. Reg. 4722, 4725 (Feb. 7, 1996) (“Distinct Population  
13 Segment Policy”). Under the Service’s Distinct Population Segment Policy, a population  
14 segment may be considered “discrete” if it “is markedly separated from other populations  
15 of the same taxon as a consequence of physical, physiological, ecological, or behavioral  
16 factors.” *Id.*

17 35. An endangered species is “any species which is in danger of extinction  
18 throughout all or a significant portion of its range.” 16 U.S.C. § 1532(6).

19 36. A threatened species is “any species which is likely to become an endangered  
20 species within the foreseeable future throughout all or a significant portion of its range.”  
21 *Id.* § 1532(20).

22 37. The Service defines “range” for the purpose of interpreting the statutory  
23 definitions of threatened as endangered species as “the general geographical area within  
24 which the species is currently found, including those areas used throughout all or part of  
25 the species’ life cycle, *even if not used on a regular basis.*” 79 Fed. Reg. 37,578, 37,609 (July 1,  
26 2014) (“Significant Portion of Its Range Policy”) (emphasis added); *see Ctr. for Biological*  
27 *Diversity v. Zinke*, 900 F.3d 1053, 1067 (9th Cir. 2018) (affirming definition).  
28

1           38.     The Service must also consider the effects from the loss of a species' historical  
2 range when determining the species' status. The Service's Significant Portion of Its Range  
3 Policy "is explicit that a species may be 'endangered or threatened throughout all or a  
4 significant portion of its current range *because* [a] loss of historical range is so substantial  
5 that it undermines the viability of the species as it exists today.'" *Humane Soc'y of the U.S. v.*  
6 *Zinke*, 865 F.3d 585, 605 (D.C. Cir. 2017) (quoting 79 Fed. Reg. at 37,584) (emphasis added  
7 and alteration in original). This policy, therefore, "requires that [the Service] consider the  
8 historical range of a species in evaluating other aspects of the agency's listing decision,  
9 including habitat degradation." *Ctr. for Biological Diversity*, 900 F.3d at 1067 (citing *Humane*  
10 *Soc'y*, 965 F.3d at 605-06).

11           39.     Once a species is listed under the ESA, it receives a number of protections.  
12 These include a prohibition on the "take" of any such species, 16 U.S.C. § 1538(a)(1)(B),  
13 which the ESA defines as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture,  
14 or collect, or to attempt to engage in any such conduct," *id.* § 1532(19). Each federal agency,  
15 moreover, must "insure that any action authorized, funded, or carried out by such agency  
16 . . . is not likely to jeopardize the continued existence of any endangered species or  
17 threatened species." *Id.* § 1536(a)(2). The Service also "shall develop and implement  
18 [recovery plans] for the conservation and survival of endangered species and threatened  
19 species." *Id.* § 1533(f)(1). When a species is "delisted" under the ESA, it no longer receives  
20 these federal protections.

## 21     **II.     THE GRAY WOLF IS A KEYSTONE SPECIES RECOVERING ONLY WITH THE** 22     **HELP OF FEDERAL PROTECTION**

23           40.     The gray wolf (*Canis lupus*) is the largest wild member of the dog family,  
24 with individual adult wolves weighing as much as 175 pounds.

25           41.     Gray wolves are social animals that hunt in packs that can have as many as  
26 20 or more wolves. Wolf pack territories can range in size up to 1,000 square miles.

27           42.     Gray wolves are a keystone species, which means that their presence or  
28 absence in a landscape has a top-down effect on the structure and function of entire

1 ecosystems. There is scientific evidence, for instance, that the reintroduction of gray  
2 wolves to Yellowstone National Park impacted the populations of elk, beaver, bison,  
3 aspen, cottonwoods, and willows.

4 43. Considerable genetic variations exist between populations of gray wolves  
5 due to adaptations to different environments. The scientific term for a population of a  
6 species with differences in appearance, behavior, and habitat is “ecotype.” Fish & Wildlife  
7 Serv., Gray Wolf Biological Report 4 (2020) (the “Gray Wolf Biological Report” or  
8 “Biological Report”).

9 44. For instance, gray wolves of the Great Lakes ecotype are smaller, adapted to  
10 mixed-deciduous forests, and primarily prey on white-tailed deer, while gray wolves in a  
11 different ecotype found in the Rocky Mountains are adapted to montane forests and prey  
12 on larger mammals such as mule deer, elk, and moose.

13 45. There is also a “coastal ecotype” that is “genetically and morphologically  
14 distinct, and display[s] distinct habitat and prey preferences, despite relatively close  
15 proximity” to other wolves. *Id.*

16 46. The coastal rainforests of the Pacific Northwest are the suitable habitat for  
17 coastal wolves, as opposed to the drier interior landscape favored by inland wolves.

18 47. Recent genomic studies identified coastal ecotype wolves in Washington and  
19 found that Washington and Oregon have distinct suitable habitats for both coastal and  
20 inland wolves.

21 48. There are at least two packs of gray wolves, the Teanaway and Rogue packs,  
22 with territories currently located primarily in habitat that has been found to be mostly  
23 suitable for the coastal ecotype. Other wolves in the Pacific Coast may share ancestry with  
24 these packs, including wolves in California descended from the Rogue pack in Oregon.

25 49. “Having robust populations of these different ecotypes improves the species’  
26 ability to adapt to changing environmental conditions over time and to recolonize a  
27 variety of suitable habitats.” *Id.* at 29.

28

1           **A. GRAY WOLVES WERE NEARLY DRIVEN EXTINCT IN THE LOWER 48**  
2           **BY PREDATOR CONTROL PROGRAMS**

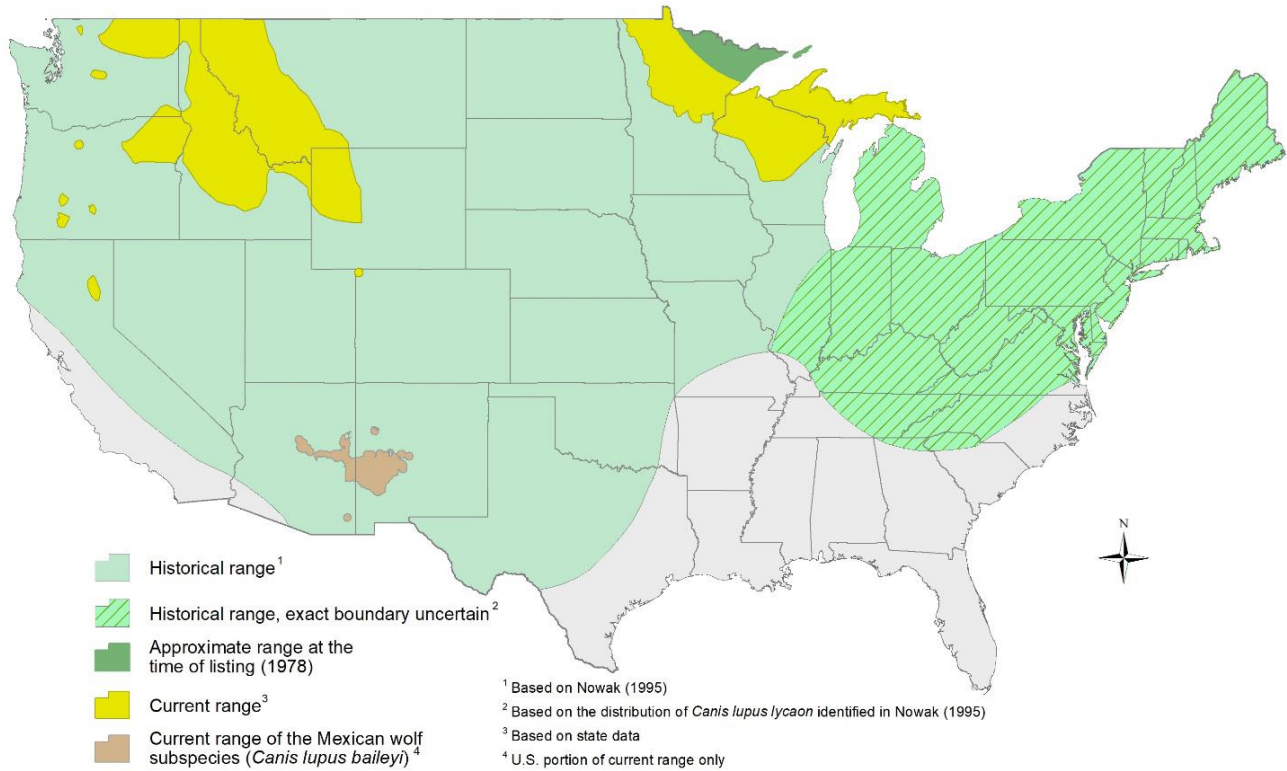
3           50. Gray wolves were once numerous across North America. Prior to European  
4 settlement, there were hundreds of thousands of gray wolves in the West and thousands  
5 more could be found throughout the Great Lakes and the Northeast.

6           51. Despite this historical abundance, gray wolves were driven almost to  
7 extinction in the lower 48 through government-sponsored predator control programs,  
8 unregulated hunting and trapping, and other human-caused mortalities. The federal and  
9 state governments played an active role in encouraging and carrying out these  
10 extermination efforts, going as far back as the first congressionally passed bounty program  
11 for wolves in 1817.

12           52. These eradication campaigns were relentlessly successful. By the 1930s,  
13 wolves had been eliminated throughout the West. The only significant population of  
14 wolves in the lower 48 by the middle of the twentieth century consisted of a thousand  
15 wolves or less in the Great Lakes.



53. Gray wolves were also eliminated from almost all of their historical range due to this eradication program. Although the historical range for gray wolves covered most of the lower 48, at the time of nationwide gray wolf listing under the ESA, the species' range was limited to Northern Minnesota and Isle Royale National Park in Michigan. This map from the Gray Wolf Biological Report shows how the Service estimates the gray wolf's historical range.<sup>1</sup>



54. The Service separately protects Mexican wolves (*Canis lupus baileyi*) as an endangered subspecies. 85 Fed. Reg. at 69,780; 50 C.F.R. § 17.11(h). Red wolves (*Canis rufus*) are recognized as a distinct species and are also protected as an endangered species. 85 Fed. Reg. at 69,786; 50 C.F.R. § 17.11(h).

<sup>1</sup> Plaintiff disputes the illustration of current range on this map. See *infra* ¶ 150.

1           **B. THE ESA HAS FACILITATED PROGRESS ON GRAY WOLF**  
2           **RECOVERY**

3           55. Gray wolves were among the first species protected under federal  
4 endangered species legislation in the 1960s. Wolves in the eastern United States first  
5 received federal protection under a precursor to the ESA in 1967 when they were listed  
6 under “Timber Wolf—*Canis lupus lycaon*.” 32 Fed. Reg. 4001, 4001 (Mar. 11, 1967). In 1973,  
7 protections under that same law were extended to wolves in the Northern Rockies under  
8 “Northern Rocky Mountain wolf—*Canis lupus irremotus*.” 38 Fed. Reg. 14,678, 14,678 (June  
9 4, 1973). Both of those entities were then protected under the ESA shortly after its passage.  
10 39 Fed. Reg. 1158, 1175 (Jan. 4, 1974).

11           56. In 1978, the Service shifted its approach to how gray wolves were listed  
12 under the ESA. The Service “recognize[d] that the entire species *Canis lupus* is Endangered  
13 or Threatened to the south of Canada,” and as a result determined that protecting gray  
14 wolves would “be handled most conveniently by listing only the species name.” 43 Fed.  
15 Reg. 9607, 9607 (Mar. 9, 1978). To implement this approach, the Service issued a  
16 rulemaking where the gray wolf “group in Mexico and the 48 conterminous States of the  
17 United States, other than Minnesota, [was] considered as one ‘species’, and the gray wolf  
18 group in Minnesota [was] considered as another ‘species’.” *Id.* at 9610. Using these two  
19 groupings, the Service listed the gray wolf as threatened in Minnesota and endangered  
20 throughout the “48 conterminous states, other than Minnesota.” *Id.* at 9612.

21           57. Although the 1978 listing was done to protect the “entire species” nationally,  
22 *id.* at 9607, the Service subsequently developed recovery plans for gray wolves only at the  
23 regional level. The Service developed a recovery plan for the “Eastern Timber Wolf” in  
24 1978 and revised that plan in 1992. The Service developed a recovery plan for Northern  
25 Rockies wolves in 1980 and revised that plan in 1987. The third regional recovery plan was  
26 for the Southwest in the area where wolves are now separately listed as the Mexican wolf  
27 subspecies. Despite repeated requests, the Service has never developed a national recovery  
28 plan for the gray wolf.

1           58.     Currently, the Service estimates there are over 6,000 gray wolves in the lower  
2 48. Of these, approximately 4,200 wolves are in the Great Lakes, roughly 54 are in the  
3 Pacific Coast, and is one pack in the Central Rockies, which had six wolves in 2020.  
4 Compared to the low point of wolves before listing under the ESA, these numbers indicate  
5 an increase in the population of the species. These gains demonstrate how the ESA's  
6 protections can facilitate progress toward species recovery. But progress toward recovery  
7 is not the same as recovery. The current population of gray wolves continues to be no  
8 more than a tiny fraction of the historical number of gray wolves, and the species has only  
9 recently begun to make tenuous returns to and remains particularly vulnerable in many  
10 regions, including the Pacific Coast and Central Rockies.

11           **C.     THE SERVICE HAS REPEATEDLY AND UNSUCCESSFULLY SOUGHT**  
12           **TO REMOVE ESA PROTECTIONS FOR GRAY WOLVES**

13           59.     Over the last two decades, the Service has made several attempts to delist  
14 gray wolves.

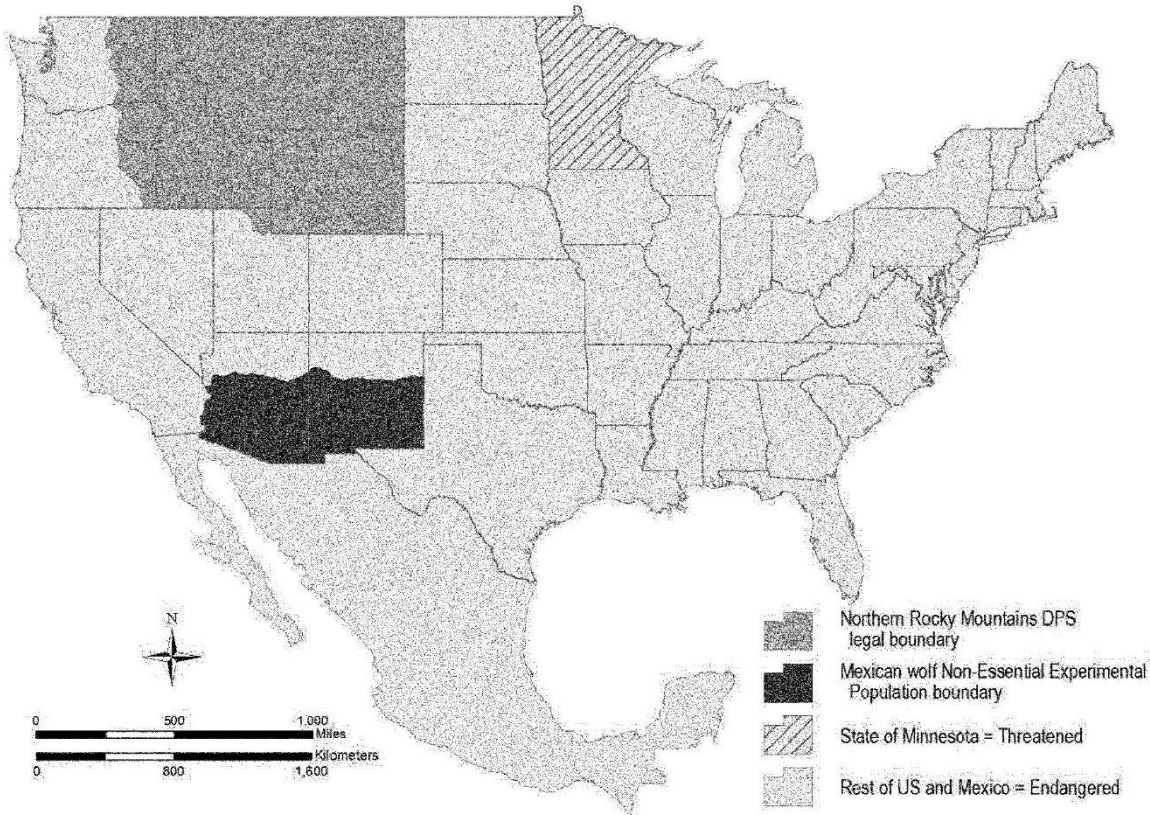
15           60.     The Service's attempts to delist gray wolves have largely failed in the courts.  
16 *See Defs. of Wildlife v. Sec'y, U.S. Dep't of the Interior*, 354 F. Supp. 2d 1156, 1174 (D. Or. 2005)  
17 (vacating 2003 rule splitting gray wolves into four groups); *Nat'l Wildlife Fed'n v. Norton*,  
18 386 F. Supp. 2d 553, 568 (D. Vt. 2005) (vacating 2003 rule splitting gray wolves into four  
19 groups); *Humane Soc'y of U.S. v. Kempthorne*, 579 F. Supp. 2d 7, 21 (D.D.C. 2008) (vacating  
20 2007 rule delisting Western Great Lakes distinct population segment); *Defs. of Wildlife v.*  
21 *Hall*, 565 F. Supp. 2d 1160, 1178 (D. Mont. 2008) (issuing preliminary injunction against  
22 2008 delisting of Northern Rocky Mountains distinct population segment); *Defs. of Wildlife*  
23 *v. Salazar*, 729 F. Supp. 2d 1207, 1228 (D. Mont. 2010) (vacating 2010 rule delisting gray  
24 wolves in the Northern Rockies except for Wyoming); *Humane Soc'y of U.S. v. Zinke*, 865  
25 F.3d 585, 615 (D.C. Cir. 2017) (upholding vacatur of 2011 delisting of Western Great Lakes  
26 distinct population segment).

27           61.     In 2011, Congress passed an appropriations bill rider directing the Service to  
28 reissue a rule to delist Northern Rockies wolves that a district court had previously

1 vacated and precluding initial judicial review of the new rule, and the Ninth Circuit  
 2 upheld this provision. *See All. for the Wild Rockies v. Salazar*, 672 F.3d 1170, 1172, 1175  
 3 (9th Cir. 2012). The Service later delisted gray wolves in Wyoming, and the Court of  
 4 Appeals for the D.C. Circuit reversed a district court ruling vacating that rule. *See Defs. of*  
 5 *Wildlife v. Zinke*, 849 F.3d 1077, 1093 (D.C. Cir. 2017).

6 62. In 2013, the Service also proposed the delisting of all gray wolves in the  
 7 lower 48 outside of the two regions where they were then unprotected. *See* 78 Fed. Reg.  
 8 35,664, 35,664 (June 13, 2013). The Service proposed to delist these wolves on the grounds  
 9 that the then “currently listed *C. lupus* entity does not represent a valid listable entity  
 10 under the” ESA. *Id.* at 35,718. This rule was never finalized.

11 63. Following these agency rules, congressional appropriations rider, and court  
 12 rulings, gray wolves were protected as threatened in Minnesota, protected as the  
 13 subspecies Mexican wolves in the Southwest, not protected in the Northern Rockies, and  
 14 protected elsewhere in the lower 48 as endangered, as shown in the map below.



1 85 Fed. Reg. at 69,782.

2 **III. DELISTING GRAY WOLVES WILL IMPAIR SPECIES RECOVERY**

3 64. The Service proposed delisting gray wolves on March 15, 2019. *See* 84 Fed.  
4 Reg. 9648 (Mar. 15, 2019) (“Proposed Rule”). In the Proposed Rule, the Service lumped  
5 wolves in Minnesota and the lower 48 into what it called the “gray wolf entity” for  
6 purposes of delisting. *Id.* at 9656. The Service used this arbitrarily combined “gray wolf  
7 entity” to claim that gray wolves can be delisted across the country because of purported  
8 recovery solely in the Great Lakes. *Id.* at 9683. NRDC submitted comments on July 15,  
9 2019, noting that combining disparate wolf populations for purposes of analysis is illogical  
10 and impermissible, arguing that wolves remain endangered throughout a significant  
11 portion of their range, and urging the Service to instead develop a national wolf recovery  
12 plan to set recovery goals for wolves throughout the United States.

13 65. The Service then issued the Rule delisting wolves on November 3, 2020,  
14 claiming that because wolves in the Great Lakes region have met certain recovery goals,  
15 wolves across the country, including in the Pacific Coast and Central Rockies, can also be  
16 delisted because they are not necessary for the Great Lakes population to survive. *See* 85  
17 Fed. Reg. at 69,886 (concluding wolves outside the Great Lakes are “not necessary for the  
18 recovered status of the combined listed entity”); *see also id.* at 69,893 (similar conclusion  
19 for wolves outside the Great Lakes and Northern Rockies for the “lower 48 United States  
20 entity”).

21 66. The Rule analyzes wolves in three different “configurations” for purposes of  
22 delisting: (1) the threatened Minnesota and the endangered “44-state entity,” separately;  
23 (2) a “combined listed entity” that lumps endangered and threatened areas together; and  
24 (3) a “lower 48 United States entity” that lumps endangered and threatened areas with  
25 the congressionally delisted Northern Rockies population. 85 Fed. Reg. at 69,784-85. The  
26 first “configuration” consists of two different entities, resulting in a total of four analyzed  
27 “entities.” *See id.* at 69,784-85. The Proposed Rule considered only the “combined listed  
28

1 entity,” which the Service had then termed the “gray wolf entity.” *See* 84 Fed. Reg. at  
2 9655-56.

3 67. According to the Service, this novel triple-configuration analysis is “a  
4 conservative approach to delisting.” *Id.* at 69,784. “Rather than focus on gray wolf  
5 [distinct population segments] and taxonomic units” – as required by section 4 of the  
6 ESA – the Service “focus[ed] on the currently listed entities.” *Id.*

7 68. The Service uses the arbitrarily defined “combined listed entity” and “lower  
8 48 United States entity” to support its contention that gray wolves can be delisted across  
9 the country solely because of their status in three regions: the Eastern United States, where  
10 wolves are recovering in the Great Lakes; the Northern Rockies, where gray wolves were  
11 delisted by Congress and not because of recovery; and the Southwestern United States,  
12 where Mexican wolves are separately listed as an endangered subspecies.

13 69. This three-region approach is based on three outdated recovery plans  
14 originally developed between 1978 and 1982. The Service declares in the Rule that it has  
15 “consistently focused on three areas” for recovery. *Id.* at 69,855. However, the Proposed  
16 Rule did not include that justification and the Service never claims that an exclusive focus  
17 on those three areas is justified by the best available science, as required by the ESA.  
18 Indeed, the Service has previously considered additional areas for wolf recovery,  
19 including specifically the Pacific Coast region.

20 70. For the first region, the Service declares that “the Great Lakes area” by itself  
21 “contains sufficient wolf numbers and distribution to ensure the long-term survival of  
22 gray wolves in the Eastern United States.” *Id.* at 69,791. The Service relies solely on the  
23 outdated 1992 Eastern Timber Wolf Recovery Plan to support this contention.

24 71. When considering the status of wolves in the Eastern United States, the  
25 Service failed to consider the potential for wolves to reestablish in the Northeast. *See id.* at  
26 69,785-86 (describing scientific status of wolves in Northeast as “unresolved”). The District  
27 of Vermont vacated a previous delisting rule for similarly combining wolves in the  
28 Midwest and Northeast. *See Nat’l Wildlife Fed’n*, 386 F. Supp. 2d at 564-65.

1           72. After delisting, gray wolves face new threats from human-caused mortality  
2 in the states in the Great Lakes region.

3           73. Under Wisconsin law, the state DNR is *required* to hold a wolf hunt starting  
4 on the first Saturday of November, and running until the last day of February, if wolves  
5 are delisted under federal and state endangered species laws. *See* Wi. Stat. § 29.185(1m), (5)  
6 (commonly known as “Act 169”).

7           74. The Delisting Rule triggered Act 169’s requirement for wolf hunts in  
8 Wisconsin.

9           75. The Wisconsin DNR is required to hold a wolf hunt this fall, beginning on  
10 November 6, 2021, and running until February 28, 2022, or when all harvest zones are  
11 closed.

12           76. Past Wisconsin wolf hunts resulted in the death of 117 gray wolves in 2012,  
13 257 gray wolves in 2013, and 154 gray wolves in 2014.

14           77. Wolf hunting in Wisconsin triggered by the Delisting Rule is likely to result  
15 in hunters and trappers killing hundreds of wolves by next February, accounting for 5 to  
16 10% of the gray wolves that the Service estimated lived in the Great Lakes region as of the  
17 Rule’s issuance.

18           78. Wolves do not recognize state or county lines, and wolf pack territories  
19 typically range in size from 13 to over 1,000 square miles. *See* Gray Wolf Biological Report  
20 at 7. Wolf mortality in a specific location removes the wolf from its territory and decreases  
21 the chance that people nearby, including people in neighboring counties or states, will  
22 have the opportunity to observe wolves in the wild.

23           79. In Wisconsin, gray wolves breed in late January and February. Wolf hunting  
24 near or during this time has impacts beyond the loss of individual wolves. As the Service  
25 has acknowledged, “[m]ortality of breeding gray wolves [is] more likely to lead to pack  
26 dissolution and reduced reproduction when mortality occur[s] very near to, or during, the  
27 breeding season.” 85 Fed. Reg. at 69,811.

28

1           80.     Wisconsin’s wolf hunt this fall will not go forward if this Court vacates the  
2 Delisting Rule.

3           81.     Under Minnesota law, if wolves are delisted, the state DNR “may prescribe  
4 open seasons and restrictions for taking wolves but must provide opportunity for public  
5 comment.” Minn. Stat. § 97B.645 subd. 9. The Minnesota DNR is currently updating its  
6 wolf management plan, making any future protections or management actions in that state  
7 uncertain. The Minnesota DNR also submitted a comment expressing concerns about the  
8 nationwide status of gray wolves. *See* 85 Fed. Reg. at 69,861 (“The Minnesota Department  
9 of Natural Resources stated that a blanket delisting of gray wolves across the United States  
10 may not be warranted.”).

11           82.     The Minnesota DNR expects that a draft wolf management plan will be  
12 available in summer 2021. The planning process includes consideration of new hunting  
13 and trapping seasons for wolves in the state.

14           83.     Michigan, another state that the Service relies on for the continued viability  
15 of wolves in the Great Lakes, submitted a comment opposing the delisting rule as  
16 unlawful. *See id.* at 69,860-61 (Michigan Attorney General objecting to the Service’s  
17 “significant portion of its range” analysis and noting the Service’s threats analysis did not  
18 fully cover the wolves’ current range).

19           84.     The last time the Service delisted gray wolves in the Great Lakes in 2011,  
20 Minnesota and Wisconsin each held three hunting seasons and Michigan held one hunting  
21 season. Over 1,400 wolves were killed during these hunts. A court restored ESA  
22 protections for these wolves in 2014.

23           85.     The Delisting Rule also exposes gray wolves to sources of human-caused  
24 mortality in the Great Lakes region beyond hunting and trapping. Minnesota now allows  
25 for private wolf depredation control, including shooting or destroying wolves, throughout  
26 the state. *See* 85 Fed. Reg. at 69,827. In Wisconsin, private landowners can obtain permits  
27 to kill depredating wolves on land they own or lease, and the state will use proactive  
28 trapping or “intensive control” of wolves in some wolf-management zones. *See id.* at



1 69,831. And in Michigan, state law authorizes lethal means to protect livestock or dogs  
2 from wolves. *See id.* at 69,834. Prior to the Delisting Rule, these now-permissible actions  
3 would have been prohibited under the ESA.

4 86. For the second region, the Service states that wolves in the Northern Rockies  
5 “have recovered and were delisted.” *Id.* at 69,792. This statement is incorrect. These wolves  
6 were delisted *not* because they were recovered, but rather because of a congressional  
7 appropriations bill that precluded initial judicial review. *See All. for the Wild Rockies*, 672  
8 F.3d at 1172. Before this congressional intervention, a district court held that the Service’s  
9 attempt to delist these wolves was “unlawful for failing to list and protect the entire”  
10 distinct population segment and vacated the delisting. *Defs. of Wildlife v. Salazar*, 729  
11 F. Supp. 2d at 1228. The current number of Northern Rockies wolves is unclear because  
12 Idaho and Montana are no longer required to conduct post-delisting monitoring. *See* 85  
13 Fed. Reg. at 69,788.

14 87. The third region relies on a continued endangered listing of the Mexican  
15 wolf as a subspecies, and the Service does not analyze this region in the Rule. *See id.* at  
16 69,791.

17 88. The Service failed to analyze the status of gray wolves in other regions in  
18 their current range, including in the Pacific Coast and Central Rockies.

19 89. The Service failed to analyze wolves in the Pacific Coast. Prior to the Rule,  
20 the ESA protected gray wolves in California and the western portions of Oregon and  
21 Washington as endangered, and there are at least 54 wolves in this area. These wolves  
22 have moved up and down the coast reestablishing territory, relying on dispersal to gain a  
23 footing in new areas. Many of the Pacific Coast wolves are of the distinct and discrete  
24 coastal ecotype with differences in genetics, size, appearance, habitat, and prey selection  
25 from inland wolves.

26 90. The first wolf pack with pups in Washington since the 1930s was confirmed  
27 in July 2008. As of the end of 2020, there are now 24 known wolf packs in the state, with  
28

1 six packs in the western portion of the state where wolves had, until the Rule, been  
2 protected by the ESA.

3 91. The first modern count to document gray wolves in Oregon found 14 in 2009.  
4 There are now approximately 173. In the western portion of the state where wolves had,  
5 until the Rule, been protected by the ESA, the 2020 wolf count found only 19 known  
6 wolves in 4 packs and 3 individual wolves. One of these packs is the Rogue Pack, which  
7 was first recognized as a new pack in the Cascade Mountains in 2014. This area is a  
8 suitable habitat for the gray wolf coastal ecotype. The dominant male that established the  
9 pack, OR-7, is believed to have died in 2020.

10 92. That same wolf, OR-7, was also the first wolf since the 1920s to be  
11 documented in California when it crossed over into the state from Oregon in 2011. The  
12 Shasta Pack was then identified as the first known breeding pack in California in 2015, and  
13 was descended from coastal Oregon wolves. That pack had only a tenuous foothold, and it  
14 disappeared by the next year. There is now a new pack in California, the Lassen Pack, with  
15 documented pups in every year since 2017. This pack has a range of roughly 500 square  
16 miles and had a minimum of five wolves at the end of 2020. Wolves also disperse  
17 significant distances across California. For instance, researchers used radio-collar data to  
18 track a daughter of OR-7 known as OR-54 for 8,712 miles as she moved from Oregon,  
19 throughout California, and even into Nevada before she died last year.

20 93. The Whalebark Pair is a recently established breeding pair in California,  
21 consisting of radio-collared male wolf OR-85 that entered the state in November 2020 and  
22 a female wolf of unknown origin. The pair have a territory of approximately 480 square  
23 miles in eastern Siskiyou County.

24 94. Because of their low population and population density, wolves in California  
25 are exposed to threats such as reduced genetic diversity, reduced probability of finding a  
26 mate, and founder effects resulting in increased susceptibility to disease. *See* 85 Fed. Reg.  
27 at 69,858; Gray Wolf Biological Report at 7.

28

1 95. Coastal wolves improve the genetic diversity of gray wolves by contributing  
2 evolutionary uniqueness and adaptive potential. Coastal wolves also can have top-down  
3 effects on ecosystems, regulating the abundance and health of other species in their  
4 distinct environments.

5 96. The Service also failed to analyze the status of Central Rockies wolves  
6 despite the recent reestablishment of at least one wolfpack, an upcoming state-led  
7 reintroduction plan, and suitable habitat in that region.

8 97. Even more recently than along the Pacific Coast, gray wolves have begun to  
9 reestablish territory in the Central Rockies. The first wolf pack in Colorado in over 70 years  
10 was spotted in 2019 and confirmed last year with at least six wolves. The origin of these  
11 wolves has yet to be determined. Although the pack has persisted for at least a year, DNA  
12 samples show that the adult wolves are likely siblings or closely related. This lack of  
13 genetic diversity creates a risk of inbreeding for this pack.

14 98. Colorado voters also approved a ballot initiative in fall 2020 to reintroduce  
15 wolves to the western slope of the Rockies. To implement this ballot initiative, the  
16 Colorado Department of Parks and Wildlife will develop a plan to reintroduce wolves by  
17 the end of 2023.

18 99. There are no established wolves in Utah because under state law, the state  
19 would “request immediate removal” of any wolf in a part of the state where they were  
20 protected as endangered and managed wolves to “prevent the establishment of a viable  
21 pack in all areas of the state where the wolf is not listed as threatened or endangered.”  
22 Utah Code § 23-29-201.

23 100. Gray wolves would face other new threats after delisting. States have been  
24 limited in their ability to use lethal methods to control wolves that attack livestock where  
25 the gray wolf is listed as endangered. After delisting, though, this practice is likely to  
26 increase.

27 101. Gray wolves will also face potential threats to their genetic diversity.  
28 Currently, dispersing wolves play a role in reducing genetic threats such as from

1 inbreeding. The ESA's protections create habitat connectivity for gray wolves, allowing  
2 wolves to move from one area of suitable habitat to another. Delisting gray wolves will  
3 reduce habitat connectivity and therefore decrease the ability of wolves to disperse. *See* 85  
4 Fed. Reg. at 69,821. Despite this decrease in connectivity and the resulting reduction in  
5 dispersal rates, the Service still relies on wolf dispersal to minimize genetic threats to  
6 wolves.

7 102. Another threat to gray wolf packs after losing ESA protections is the negative  
8 effect of the loss of individual wolves, particularly if the loss is one of a pack's breeding  
9 pair, on wolf social structure. This impact can extend beyond an individual pack by  
10 reducing dispersal, recruitment, or even population growth. These effects are often  
11 magnified for wolves in packs in recently reestablished territory. The wolfpacks in  
12 California and the Central Rockies have only become established in the last few years.

13 103. The Delisting Rule will result in the loss of individual breeders, and that loss  
14 will have the greatest effect on small gray wolf populations. *See* 85 Fed. Reg. at 69,811.

15 104. Gray wolves in areas with relatively few wolves, such as Pacific Coast  
16 wolves and wolves in the Central Rockies, "may be at greater risk from human-caused  
17 mortality or from factors related to small numbers of individuals." *Id.* at 69,892.

18 105. Restoring federal ESA protections for gray wolves would support the  
19 recovery of the species, especially in areas like the Pacific Coast and the Central Rockies  
20 where gray wolves are just beginning to regain their historical footing. Federal protections  
21 for gray wolves would increase the opportunities for NRDC members, including those  
22 mentioned in this Complaint, to observe, enjoy, and delight in the presence of the species  
23 in the wild.

24 106. On January 20, 2021, the Rule was included on a list of agency actions to be  
25 reviewed under the Executive Order titled "Protecting Public Health and the Environment  
26 and Restoring Science to Tackle the Climate Crisis." The Rule has not been rescinded, and  
27 Interior and the Service have yet to take any public actions as part of this review.  
28



1 Coast wolves as descending from Northern Rockies and Canadian wolves). Recent  
2 genomic studies found that Pacific Coast wolves are distinct, and independent peer  
3 reviewers explained these studies to the Service.

4 113. The Service's justification thus "runs counter to the evidence before the  
5 agency." *State Farm*, 463 U.S. at 43.

6 114. Courts have previously rejected rules where the Service analyzed only the  
7 status of wolves in "core areas" of wolf population while lumping together or ignoring  
8 surrounding low-population areas. *See Defs. of Wildlife*, 354 F. Supp. 2d at 1172 (finding the  
9 Service applied the Distinct Population Segment Policy in a manner that was "inconsistent  
10 with the statute" (quoting *Mines v. Sullivan*, 981 F.2d 1068, 1070 (9th Cir. 1992))); *Nat'l*  
11 *Wildlife Fed'n*, 386 F. Supp. 2d at 565 (same).

12 115. The Service takes the same error to the extreme here: it lumps together core  
13 populations of Great Lakes and Northern Rockies wolves with wolves in low-population  
14 areas across the lower 48 to form and delist the "lower 48 United States entity," 85 Fed.  
15 Reg. at 69,893.

16 116. Therefore, the Rule is arbitrary, capricious, and not in accordance with law  
17 and should be set aside under the ESA and the APA. 16 U.S.C. §§ 1533, 1540(g); 5 U.S.C.  
18 § 706(2).

## 19 SECOND CLAIM FOR RELIEF

### 20 (Violation of Endangered Species Act – 21 Failure to Analyze Status of Pacific Coast Wolves)

22 117. Plaintiff hereby realleges and incorporates Paragraphs 1 through 116.

23 118. The Rule claims that Pacific Coast wolves are simply an extension of the  
24 Northern Rockies distinct population segment, denigrating Pacific Coast wolves as mere  
25 "colonizing wolves" whose small numbers make their presence unnecessary for wolf  
26 recovery in the "lower 48 United States." *See* 85 Fed. Reg. at 69,789, 69,886.

27 119. The Service earlier determined that Northern Rockies wolves were discrete  
28 from Pacific Coast wolves, *see* 73 Fed. Reg. 10,514, 10,518-19 (Feb. 27, 2008); 74 Fed. Reg.

1 15,123, 15,128-29 (Apr. 2, 2009), to justify creating the Northern Rockies distinct population  
2 segment that excludes Pacific Coast wolves.

3 120. Now, the agency claims that Pacific Coast wolves “are *not* discrete from  
4 wolves in the delisted [Northern Rockies] portion of the gray wolf taxon,” 85 Fed. Reg. at  
5 69,783-84 (citing 78 Fed. Reg. at 35,707-13) (emphasis added), and therefore they *cannot*  
6 constitute a distinct population segment that would warrant protection.

7 121. That the Service changed its policy position without providing “a reasoned  
8 explanation . . . for disregarding facts and circumstances that underlay . . . the prior  
9 policy” is arbitrary and capricious. *Organized Vill. of Kake v. U.S. Dep’t of Agric.*, 795 F.3d  
10 956, 966 (9th Cir. 2015) (en banc) (quoting *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502,  
11 515-16 (2009)).

12 122. The Service’s decision to graft Pacific Coast wolves onto an already-delisted  
13 segment violates the law by committing the same fault the D.C. Circuit described in  
14 *Humane Society of the U.S. v. Zinke* – creating a distinct population segment in order to  
15 delist one group, leaving out less populated surrounding areas, and then attempting to  
16 delist the “remnant” population. 865 F.3d at 601-03. The Pacific Coast wolves must not be  
17 treated as “a leftover group that becomes an orphan to the law,” *id.* at 603, because of the  
18 agency’s earlier Northern Rockies distinct population segment designation. “Such a  
19 statutory dodge is the essence of arbitrary-and-capricious and ill-reasoned agency action.”  
20 *Id.*

21 123. Therefore, the Rule is arbitrary, capricious, and not in accordance with law  
22 and should be set aside under the ESA and the APA. 16 U.S.C. §§ 1533, 1540(g); 5 U.S.C.  
23 § 706(2).

### 24 **THIRD CLAIM FOR RELIEF**

#### 25 **(Violation of Endangered Species Act –** 26 **Failure to Consider Species Status Through a Significant Portion of Its Range)**

27 124. Plaintiff hereby realleges and incorporates Paragraphs 1 through 123.  
28

1           125. The Service failed to analyze whether the gray wolf is endangered or  
2 threatened throughout a “significant portion of its range,” as required by the ESA. 16  
3 U.S.C. § 1532(6), (20). The Rule states that the Service

4           assessed ‘significance’ based on whether *portions of the range contribute*  
5 *meaningfully to the resiliency, redundancy, or representation of the gray wolf entity being*  
6 *evaluated* without prescribing a specific ‘threshold.’ This approach is substantively  
7 different from the way we defined ‘significance’ in our [Significant Portion of Its  
8 Range Policy] and, therefore, different from the approach evaluated and  
9 overturned by the courts.

85 Fed. Reg. at 69,854 (emphasis added).

9           126. Using that definition, the Service determined that Pacific Coast and Central  
10 Rockies wolves “may be at greater risk from human-caused mortality or from factors  
11 related to small numbers of individuals. However, wolves in these portions are not  
12 meaningful to the redundancy or resiliency of the 44-State entity because they occur in  
13 small numbers and include relatively few breeding pairs.” *Id.* at 69,885; *see also id.* at 69,889  
14 (same conclusion for “combined listed entity”); *id.* at 69,892-93 (similar conclusion for  
15 “lower 48 United States entity”). The Service does not consider any other areas where gray  
16 wolves are listed, including where wolves have been repeatedly sighted, to determine  
17 whether these areas may constitute a “significant portion of its range.”

18           127. The Rule’s conclusions about Central Rockies wolves also lack a “rational  
19 connection between the facts found and the choice made.” *State Farm*, 463 U.S. at 43  
20 (quotation marks omitted).

21           128. There are currently wolves in Colorado, including an established wolfpack.

22           129. The Service acknowledged in the Rule that “[a]dditional populations of  
23 wolves in Colorado *would add to the resiliency and redundancy* of gray wolves in the lower 48  
24 United States.” 85 Fed. Reg. at 69,866 (emphasis added). Yet the Service still concluded  
25 Central Rockies wolves are “not meaningful to resiliency or redundancy because they  
26 contain few wolves, or few or no breeding pairs.” *Id.* at 69,892.

27           130. By this circular logic, the Service acknowledges that a larger population of  
28 wolves in the Central Rockies where there is suitable habitat for a significant number of



1 wolves would add to the wolves' resiliency and redundancy; however, because wolves  
2 have not yet recovered enough in that habitat, the agency entirely ignores these wolves for  
3 purposes of the ESA threats analysis. And one reason that wolves are not recovering in the  
4 Central Rockies is that Utah is actively preventing it, showing an "inadequacy of existing  
5 regulatory mechanisms" in that state. 16 U.S.C. § 1533(a)(1)(D).

6 131. Removing ESA protections for Central Rockies wolves before they can  
7 occupy this suitable habitat and contribute to the resiliency and redundancy of the species,  
8 and in turn its likelihood of survival, is an impediment to species recovery.

9 132. Therefore, the Rule is arbitrary, capricious, and not in accordance with law  
10 and should be set aside under the ESA and the APA. 16 U.S.C. §§ 1533, 1540(g); 5 U.S.C.  
11 § 706(2).

#### 12 **FOURTH CLAIM FOR RELIEF**

##### 13 **(Violation of Endangered Species Act –** 14 **Failure to Comply with Significant Portion of Its Range Policy)**

15 133. Plaintiff hereby realleges and incorporates Paragraphs 1 through 132.

16 134. The Rule impermissibly applies the term "significant portion of its range" to  
17 require a threat to wolves' viability throughout each of the four defined entities. *See* 85  
18 Fed. Reg. at 69,881 (Minnesota entity); *id.* at 69,884 (44-state entity); *id.* at 69,888 (combined  
19 listed entity); *id.* at 69,892 (lower 48 United States entity).

20 135. This decision violates the ESA's requirement to determine whether a species  
21 is endangered throughout all *or a significant portion* of its range. Without considering this  
22 question, the agency "entirely failed to consider an important aspect of the problem." *State*  
23 *Farm*, 463 U.S. at 43.

24 136. The Service has failed to give meaning to both "all of its range" and "a  
25 significant portion of its range." Caselaw requires both. The "significant portion of its  
26 range" language is rendered "illusory" where the Service requires the "significant  
27 portion" to be "so important that, without the members in *that* portion, the species would  
28 be endangered or threatened throughout *all* of its range." *Desert Survivors v. U.S. Dep't of*

1 *the Interior*, 321 F. Supp. 3d 1011, 1072-73 (N.D. Cal. 2018) (emphasis added) (quoting *Ctr.*  
2 *for Biological Diversity v. Jewell*, 248 F. Supp. 3d 946, 956 (D. Ariz. 2017)); see also *Defenders of*  
3 *Wildlife v. Norton*, 258 F.3d 1136, 1141-42 (9th Cir. 2001) (noting that in “reading ‘all’ and ‘a  
4 significant portion of its range’ as functional equivalents,” the agency made an  
5 “unacceptable” error in its statutory construction by rendering a significant statutory  
6 phrase redundant).

7 137. In the Rule, the Service has once again interpreted “significant” in a way that  
8 renders consideration of endangerment throughout a “significant portion of its range”  
9 illusory. The Service finds that while wolves outside of the Great Lakes and Northern  
10 Rockies populations may be threatened by human-caused mortality, the populations  
11 outside these regions are not “significant.” But in each of the portions the Service analyzes,  
12 including the Pacific Coast, Central Rockies, and Northeast, the agency determines that the  
13 wolf populations are not significant *because* they do not add “resiliency, redundancy, or  
14 representation” to the whole of each entity the Service defined and analyzed in the Rule –  
15 i.e., they are not necessary for the species’ viability. Putting aside the lack of scientific basis  
16 for those claims, this interpretation fails to give meaning to both sides of the “or” by  
17 defining a portion’s significance in terms of the entire entity’s viability. Such an  
18 interpretation renders the phrase “significant portion of its range” superfluous and is thus  
19 arbitrary.

20 138. Therefore, the Rule is arbitrary, capricious, and not in accordance with law  
21 and should be set aside under the ESA and the APA. 16 U.S.C. §§ 1533, 1540(g); 5 U.S.C.  
22 § 706(2).

### 23 FIFTH CLAIM FOR RELIEF

#### 24 (Violation of Endangered Species Act – 25 Failure to Use Best Available Science in Range Analysis)

26 139. Plaintiff hereby realleges and incorporates Paragraphs 1 through 138.

27 140. The Rule’s conclusion that Pacific Coast wolves are “not biologically  
28 ‘significant’” and are not “significant to the combined listed entity in terms of its

1 resiliency, redundancy, or representation,” 85 Fed. Reg. at 69,889, is unsupported by the  
2 best available science. Where the Service reaches a “conclusion” to delist a species  
3 “without scientific basis, this conclusion is arbitrary and capricious.” *Crow Indian Tribe*, 965  
4 F.3d at 679 (ruling the Service failed to use best available science for Yellowstone grizzly  
5 bear delisting).

6 141. Here, the Service’s conclusion conflicts with its own finding in the 2020 Gray  
7 Wolf Biological Report that there are wolves of a “coastal ecotype” that are “genetically  
8 and morphologically distinct, and display distinct habitat and prey preferences” from  
9 inland wolves, like those in the Northern Rockies, “despite relatively close proximity.”  
10 Gray Wolf Biological Report at 4-5. It also departs from the Service’s 2008 finding that  
11 Pacific Coast wolves are discrete. 73 Fed. Reg. at 10,519.

12 142. The best available science, including recent genomic studies that scientific  
13 peer reviewers identified and explained to the Service, shows that there are predominately  
14 coastal ecotype wolves and distinct suitable habitat for those wolves in the Pacific Coast.

15 143. The Service “cannot ignore available biological information,” *Ctr. for*  
16 *Biological Diversity*, 900 F.3d at 1060 (quoting *Conner v. Burford*, 848 F.2d 1441, 1454 (9th Cir.  
17 1988)), and its decision lacks a “rational connection between the facts found and the choice  
18 made,” *State Farm*, 463 U.S. at 43 (quotation marks omitted).

19 144. Another reason the Service gives for why Pacific Coast wolves are not  
20 discrete from Northern Rockies wolves is that “there is little separation between occupied  
21 wolf habitat in the” Northern Rockies “and suitable habitat in western Washington,  
22 western Oregon, and northern California.” 85 Fed. Reg. at 69,784. But in the Biological  
23 Report, the Service found that “[f]actors such as habitat type and prey specialization have  
24 been shown to influence genetic structuring, leading to measurable differentiation *even*  
25 *between areas with no physical barriers to dispersal.*” Gray Wolf Biological Report at 4  
26 (emphasis added). Genetic differences are “driven more strongly by climate and ecological  
27 factors” than by “isolation by distance.” *Id.* The Pacific Coast has a distinct climate and  
28 ecology from interior areas of the West.



1 1075, 1090-91 (9th Cir. 2015) (quoting *TVA v. Hill*, 437 U.S. at 187); *Ctr. for Biological*  
2 *Diversity v. Zinke*, 900 F.3d at 1073 (quoting *Ariz. Cattle Growers' Ass'n v. Salazar*, 606 F.3d  
3 1160, 1167 (9th Cir. 2010)).

4 150. Here, the Service excluded large portions of range currently known to be  
5 used by wolves. *See* 85 Fed. Reg. at 69,786 (excluding areas used by dispersing wolves  
6 from the consideration of current range). Wolves are known to be present far beyond the  
7 areas where the Service performed its section 4(a) threats analysis. The Rule acknowledges  
8 that wolves have recently been found in numerous states across the West, Midwest, and  
9 Northeast. *See* 85 Fed. Reg. at 69,789. These areas, which include the Northeast, meet the  
10 regulatory definition of “range” under the Significant Portion of Its Range Policy. And  
11 they are used as “part of the species’ life cycle,” 79 Fed. Reg. at 37,609, through dispersal.  
12 “[D]ispersal” is a behavior that involves wolves leaving “their natal pack to locate social  
13 openings in existing packs or find a mate and form a new pack.” Gray Wolf Biological  
14 Report at 7.

15 151. Dispersal is a critical part of wolf behavior contributing to viability in the  
16 United States, as the Service acknowledges. 85 Fed. Reg. at 69,820 (“An important factor  
17 for maintaining genetic diversity can be connectivity or effective dispersal between  
18 populations or subpopulations.”). Defining current range in a way that excludes these  
19 areas is arbitrary because it contradicts the agency’s own evidence. *See State Farm*, 463 U.S.  
20 at 43.

21 152. The Service therefore ignores the extinction risk to wolves in portions of their  
22 current range. According to the Rule, the “risk of human-caused mortality . . . tends to be  
23 highest for dispersing animals.” 85 Fed. Reg. at 69,794; *see also id.* at 69,789 n.3 (noting  
24 wolves in large, continuous, high quality habitat have a “greater evolutionary potential  
25 and resilience to stochastic events” than wolves in smaller, more isolated habitats). The  
26 Service even “acknowledge[s] that both the West Coast States and central Rocky  
27 Mountains portions of the combined listed entity may be at greater risk from human-  
28 caused mortality or from factors related to small numbers of individuals.” *Id.* at 69,889; *see*

1 *also id.* at 69,885 (same conclusion for 44-state entity); *id.* at 69,892 (similar conclusion for  
2 lower 48 United States entity).

3 153. Even though the Service finds these wolves “may be in danger of extinction  
4 or likely to become so in the foreseeable future,” *id.* at 69,885, 69,889, 69,893 – which is the  
5 core of the statutory definitions for an endangered or threatened species, 16 U.S.C.  
6 § 1532(6), (20) – the Service ignores this threat because, according to the agency, these  
7 wolves are not “significant under any reasonable definition of that term,” 85 Fed. Reg. at  
8 69,885, 69,889, 69,893.

9 154. Therefore, the Rule is arbitrary, capricious, and not in accordance with law  
10 and should be set aside under the ESA and the APA. 16 U.S.C. §§ 1533, 1540(g); 5 U.S.C.  
11 § 706(2).

## 12 SEVENTH CLAIM FOR RELIEF

### 13 (Violation of Endangered Species Act – 14 Failure to Consider Impacts from Loss of Historical Range)

15 155. Plaintiff hereby realleges and incorporates Paragraphs 1 through 154.

16 156. The Service also fails to analyze the impact of lost historical range for gray  
17 wolves, in violation of the ESA and the Service’s Significant Portion of Its Range Policy.  
18 Although it is permissible for the Service to define the term “range” to mean “current  
19 range” for the purposes of the definitions of threatened and endangered species, the  
20 Service cannot ignore the impact of lost historical range on a species’ status. *See Humane*  
21 *Soc’y v. Zinke*, 865 F.3d at 606-07; *Ctr. for Biological Diversity v. Zinke*, 900 F.3d at 1066-67.

22 157. According to the Service’s Significant Portion of Its Range Policy, a species  
23 may be “endangered or threatened throughout all or a significant portion of its current  
24 range because [the] loss of historical range is so substantial that it undermines the viability  
25 of the species as it exists today.” 79 Fed. Reg. at 37,584. The Service “must also consider the  
26 causes of that loss of historical range. If the causes of the loss are still continuing, then that  
27 loss is also relevant as evidence of the effects of an ongoing threat.” *Id.*

28



1 and prey availability in the Northern Rockies); *id.* at 69,822-25 (management in the delisted  
2 Northern Rockies). This new information in turn serves as the foundation for the Service’s  
3 finding about the status of wolves in the “lower 48 United States entity,” a new creation of  
4 the Rule. *Id.* at 69,893.

5 164. Commenters, including scientific peer reviewers, did not have notice that the  
6 Service would be examining the recovery status of Northern Rockies wolves or that the  
7 Service would create a new “lower 48 United States entity.” Because the Service included  
8 this information and entity for the first time in the Rule, that rule is not a logical outgrowth  
9 of the Proposed Rule. *See NRDC v. EPA*, 279 F.3d 1180, 1186 (9th Cir. 2002).

10 165. Therefore, the Rule is arbitrary, capricious, and not in accordance with law  
11 and should be set aside under the ESA and the APA. 16 U.S.C. §§ 1533, 1540(g); 5 U.S.C.  
12 § 706(2).

13 **PRAYER FOR RELIEF**

14 Plaintiffs respectfully request that the Court:

- 15 (1) Declare that Interior and the Service acted arbitrarily, capriciously, and  
16 contrary to ESA and its implementing regulations and in violation of the APA in issuing  
17 the November 3, 2020 Rule;
- 18 (2) Hold unlawful and vacate the November 3, 2020 Rule;
- 19 (3) Issue injunctive relief as necessary to prevent the implementation of the Rule;
- 20 (4) Award Plaintiff its reasonable fees, costs, and expenses, including attorneys’  
21 fees; and
- 22 (5) Grant Plaintiff such further and additional relief as the Court may deem just  
23 and proper.

24 DATED this 20th day of May, 2021.

25 Respectfully submitted,

26 /s/ Francis W. Sturges, Jr.  
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